

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED CORPORATION,)	CIVIL NO. SX-13-CV-152
)	
<i>Plaintiff,</i>)	ACTION FOR DAMAGES
)	
v.)	
)	
WADDA CHARRIEZ,)	
)	
<i>Defendant.</i>)	
)	

**DEFENDANT WADDA CHARRIEZ'S RESPONSE TO UNITED'S NOTICE RE
ITS PENDING MOTIONS AS TO PROPER PARTY PLAINTIFF**

By Order dated January 12, 2018, entered on January 16, 2018, the Plaintiff United Corporation ("United") was given leave to notify the Court as to how it wished to proceed on its pending motion to substitute Fathi Yusuf as a necessary party in place of United. That Order requested United to decide whether it could prove Charriez was its employee when the suit was filed – or whether some other party should be substituted in place of United.

United's January 31st response is a prime example of avoiding the issue. First, United claims it was her 'employer in fact' as it paid Charriez from what appears on its face to be a "United" payroll account for years -- despite the fact that the account was labeled "DBA PLAZA EXTRA SUPERMARKETS". However, United then waffled and left it to this Court to determine whether "Fahti Yusuf" might have been her employer, and if so, whether he should be substituted as the named Plaintiff in this case.

Of course, this was the question the Court asked United to answer, not evade. In any event, **no substitution is warranted**, as United's "meandering" fails to take into account the actual facts giving rise to this lawsuit.

In this regard, United is a Virgin Islands corporation, which owns the shopping center where one of the Plaza Extra Supermarkets was located ("Plaza East"), as there are three such stores. United mixed the entire operations of the supermarkets in its corporate books for decades, even though both Fathi Yusuf and his brother-in-law, Mohammad Hamed, actually **operated the three Plaza Extra supermarkets as a partnership**, splitting all supermarket profits 50/50 and operating the stores entirely as a partnership, sharing management responsibilities jointly. By contrast, United always kept 100% of the shopping center rents, which included rent paid to by the Hamed/Yusuf Partnership to United.

All of this background is extensively discussed in Judge Brady's decision in entering an injunction, finding that Hamed was likely to prove there was a partnership. *See Hamed v. Yusuf*, 58 V.I. 117 (V.I. Super. Apr. 25, 2013). Moreover, the V.I. Supreme Court affirmed this decision in a detailed opinion. *See Yusuf v Hamed*, 59 V.I. 841 (V.I. 2013). The facts that follow are discussed at length in those opinions.

As those opinions note, at some point in 2012, Yusuf decided to deny the existence of the partnership and steal Hamed's 50% share by claiming United owned 100% of the Plaza Extra stores. That "grab" for these three profitable stores (and the \$42 million plus in profits sitting in a bank account) lead to litigation between Yusuf and Hamad, as reported above.

After a lawsuit was filed in September of 2012 to determine who owned the stores, Yusuf decided that Wadda Charriez, an accountant in the Plaza Extra store at the United Shopping Center branch ("Plaza East"), was not being loyal to him. Thus, he tried to fire her on January 8, 2013. The Hamed's stepped in, **pointed out that Ms. Charriez was a Partnership employee and asserted that she could not be fired without their consent.** Caught in the cross-fire, Wadda Charriez stayed at her desk on the second floor of the Plaza East store.

After verbally abusing her to get her to leave, Fathi Yusuf then called the police on January 9, 2013, to arrest her for criminal trespass and remove her. However, after the police arrived, they decided this was a civil dispute and left. Needless to say, tensions were quite high in the work area where Wadda Charriez was sitting that day, which included yelling, finger-pointing and a clear threat of physical harm.

Recognizing the danger of the situation, Judge Brady held TRO hearings right away. Judge Brady made it clear that there were to be no disruptions while he considered the matter, taking the matter under advisement. He subsequently entered an injunction, finding that Hamed would most likely prevail on his partnership claim. As for the threats and intimidation of Charriez and her testimony, he found in his Opinion, *id.* at 128-129, as follows:

40. On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor. Charriez had a "very critical job" with Plaza Extra, and the independent accountant retained by Yusuf agreed that she was "a very good worker" and that her work was "excellent." **Because the Hamed co-managers had not been consulted concerning the termination or shown any proof of the employee's improper activity, Mafeed Hamed instructed Charriez to return to work the**

following day. On Charriez' January 9, 2013 return to work, Yusuf started screaming at her, and told her to leave or he would call the police. Yusuf did call police and demanded on their arrival that Charriez, and Mufeed Hamed and Waleed Hamed be removed from the store, and threatened to close the store. The incident that occurred on January 9, 2013, the same day that Plaintiff's Renewed Motion was filed, coupled with other evidence presented demonstrates that there has been a breakdown **in the co-management structure of the Plaza Extra Supermarkets.** (References to the hearing transcript omitted) (Emphasis added).

He then made it clear that the partnership was to be operated jointly by Hamed and Yusuf until the injunction was dissolved, holding in part:

ORDERED that the operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, **without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations.** (Emphasis added).

Notwithstanding this Order, **one week after Judge Brady's order was entered, United filed this vindictive lawsuit against Charriez—filed by United, not for the Partnership -- which it did without the Hamed's permission or consent.** See Exhibit 1. In short, the Partnership did not authorize this lawsuit.

As Hamed had not authorized this lawsuit, as required by Judge Brady's Order regarding any partnership decisions, United is the only possible Plaintiff, as Judge Brady's Order prohibited "unilateral action" by either partner, including actions that would affect employees like Charriez. As such, to prevail in this case, *United has to prove Wadda Charriez was its employee.* Indeed, United (as opposed to the Partnership) has paid all fees of Plaintiff's counsel to date.

Equally important, substituting Yusuf as Ms. Charriez's alleged employer in 2013 would not cure anything, as Ms. Charriez was never employed by Yusuf personally. Substituting the Partnership as the Plaintiff would not work either, as Hamed never

authorized the suit as required by Judge Brady's Order. Indeed, Hamed still objects to this case being pursued by the partnership. See **Exhibit 1**.¹

Finally, counsel for Wadda Charriez wants to make it clear that her counterclaim is against United, not the partnership, while her third-party claim is against Yusuf for his acts in his individual capacity. The allegations in her pleadings set forth these claims, so United must remain a counterclaim defendant regardless of what happens to its claims against her.

In summary, there is absolutely no possible theory under which Yusuf would have some right to bring this suit in his name against Ms. Charriez without Hamed's consent, which was never given. See **Exhibit 1**. Indeed, there was a clear Court order which completely prevented such action. Thus, United has chosen the path of asserting Ms. Charriez was its employee, the merits of which needs to be litigated by United, not some other party.

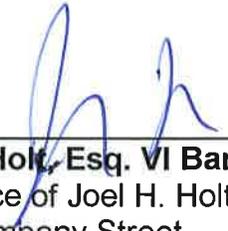
Finally, consolidating this case with the Partnership dissolution case (SX-12-CV-370) and transferring it to Judge Brady is not a solution, as this case was never filed as a Partnership claim—it was filed as a stand-alone action by United and has been prosecuted as such since it was filed.² In short, this case is the only way United could proceed with filing a vindictive claim against Ms. Charriez **immediately after losing the**

¹ In fact, Ms. Charriez, whom the Court noted was known to be “a very good worker” by United's then (and still current) accountant, whose work was “excellent,” is now employed by the new owner of the Plaza West Store (controlled by the Hameds). See **Exhibit 1**.

² Indeed, the period for filing new claims in the partnership liquidation process has now ended without this claim being listed as a Partnership claim. Thus, it is not such a claim and CANNOT NOW BECOME ONE due to the bar date for such claims.

injunction issue, as otherwise it would have been in violation of Judge Brady's injunction requiring all partnership decisions to be made jointly.

Dated: February 5, 2018



Joel H. Holt, Esq. VI Bar No. 6
Law Office of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
(340) 773-8677
Email: holtvi@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2018, I served a copy of the foregoing Response by email, as agreed by the parties, on:

Glenda Cameron, Esq.
Law Offices of K.G. Cameron
29A King Cross Street
Christiansted, VI 00820
kglenda@cameronlawvi.com
(340) 773-3444

Charlotte Perrell, Esq.
Dudley, Topper and Feuerzeig
Law House, 10000 Frederiksberg Gade
P.O. Box 756
ST.Thomas,VI00802



**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

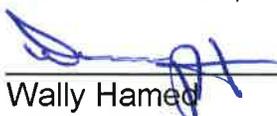
UNITED CORPORATION,)	CIVIL NO. SX-13-CV-152
<i>Plaintiff,</i>)	ACTION FOR DAMAGES
)	
v.)	
)	
WADDA CHARRIEZ,)	
<i>Defendant.</i>)	
)	

DECLARATION OF WALLY HAMED

I, Wally Hamed, declare, pursuant to V.I. R. CIV. P. 84, as follows:

1. I am over 18 years of age.
2. I am familiar with the facts set forth herein.
3. In 2012 and 2013, I was representing my father's interest in the Hamed-Yusuf partnership, which operated the three Plaza Extra supermarkets, pursuant to a power of attorney, as I had been doing for years.
4. After Judge Brady issued an injunction in April of 2013 requiring all partnership decisions to be made jointly by the partnership, United filed a retaliatory suit against Wadda Charriez, docketed as SX-13_CV-152.
5. That suit by United was never authorized by the Hameds or the partnership. Indeed, the Hameds objected to this litigation being filed and want this litigation against Charriez dismissed.
6. Wadda Charriez is a very good accounting employee who now works at Plaza West for a new company that operates that store, which is owned by members of the Hamed family.

I declare under penalty of perjury that the foregoing is true and correct, executed on this 5th day of February, 2018.



Wally Hamed

